

APPEAL NO. 060380
FILED MAY 3, 2006

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 5, 2006. The hearing officer resolved the disputed issue by deciding that the appellant (attorney) is entitled to \$4,685.00 in additional fees for sequence 14 and ordered respondent 1 (carrier) to pay attorney the total of requested fees of \$7,460.00 after deducting the sum of \$2,775.00 which the carrier paid pursuant to the Commission Order for Attorney's Fees (Order) dated November 4, 2005. The hearing officer found that the Order is superceded by the determination of the CCH. The attorney appealed, arguing that there is no evidence which supported the hearing officer's conclusion that the carrier had previously paid \$2,775.00. The appeal file does not contain a response from either respondent 2 (claimant) or the carrier.

DECISION

Reversed and rendered.

On July 12, 2005, a CCH was held to determine the claimant's entitlement to supplemental income benefits (SIBs) for the fourth and fifth quarters. The hearing officer at that CCH determined that the claimant was entitled to SIBs for the fourth and fifth quarters. The carrier appealed that determination but the hearing officer's decision became final. The attorney requested 37.30 hours for work performed at a rate of \$200.00/hour. In the Order 18.50 hours were approved at a rate of \$150.00/hour. All of the requested travel time was denied stating "Ex Guideline/Unreasonabl." The attorney noted in his justification for the requested fees that the fee guidelines listed in 28 TEX. ADMIN. CODE § 152.4 (Rule 152.4) do not apply to SIBs cases. The attorney requested a benefit review conference (BRC) and a CCH regarding the disputed attorney's fees was held on January 5, 2006. At the CCH, the attorney represented that the travel time requested was the actual travel time taken for representation of the claimant at both the BRC and the CCH. Further, the attorney presented evidence regarding the reasonableness of his hourly requested rate of \$200.00/hour. The hearing officer found that a reasonable hourly rate for attorney fees in this case is \$200.00/hour and that under sequence 14, the attorney "reasonably utilized 37.3 hours of attorney work." There is sufficient evidence in the record to support these findings. However, the hearing officer additionally found that the carrier has paid the attorney \$2,775.00 under sequence 14. The hearing officer correctly noted that the attorney only requested \$4,685.00. However, the record reflects that the attorney requested \$4,685.00 because that was the difference between the amount requested and the amount previously approved. The attorney argues in his appeal that he never received a check from the carrier in this amount. There is no evidence in the record to support the hearing officer's determination that the attorney has already been paid the sum of \$2,775.00. We reverse that part of the hearing officer's decision that entitled the carrier to deduct the sum of \$2,775.00, which it paid pursuant to the prior superceded attorney

fee order and render a new determination that the attorney is entitled to \$7,460.00 for sequence 14 and that the carrier is entitled to deduct the amount previously paid to attorney for sequence 14, if any.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge